



House of Representatives

File No. 624

General Assembly

February Session, 2012

(Reprint of File No. 501)

House Bill No. 5147
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 3, 2012

AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2012*) (a) A notary public shall
2 not offer or provide legal advice to any person in immigration matters
3 or represent any person in immigration proceedings unless such
4 notary public (1) has been admitted as an attorney under the
5 provisions of section 51-80 of the general statutes, or (2) is authorized
6 pursuant to 8 CFR 292.2 to practice immigration law or represent
7 persons in immigration proceedings.

8 (b) A notary public shall not assume, use or advertise the title of
9 notario or notario publico, unless such notary public (1) has been
10 admitted as an attorney under the provisions of section 51-80 of the
11 general statutes, or (2) indicates in any advertisement or otherwise
12 provides written notice that such notary public is not licensed as an
13 attorney in this state.

14 (c) Any notary public who violates any provision of this section
15 shall have committed a violation of subsection (a) of section 51-88 of

16 the general statutes, as amended by this act, and be subject to the
17 penalties set forth in subsection (b) of section 51-88 of the general
18 statutes, as amended by this act.

19 Sec. 2. Section 51-88 of the general statutes is repealed and the
20 following is substituted in lieu thereof (*Effective October 1, 2012*):

21 (a) [A] Unless a person is providing legal services pursuant to
22 statute or rule of court, a person who has not been admitted as an
23 attorney under the provisions of section 51-80, or having been
24 admitted under said section, has been disqualified from the practice of
25 law due to resignation, disbarment, being placed on inactive status or
26 suspension for reason other than the failure to pay the occupational tax
27 on attorneys imposed pursuant to section 51-81b or the client security
28 fund fee imposed pursuant to section 51-81d, shall not: (1) Practice law
29 or appear as an attorney-at-law for another [,] in any court of record in
30 this state, (2) make it a business to practice law [,] or appear as an
31 attorney-at-law for another in any such court, (3) make it a business to
32 solicit employment for an attorney-at-law, (4) hold himself or herself
33 out to the public as being entitled to practice law, (5) assume to be an
34 attorney-at-law, (6) assume, use or advertise the title of lawyer,
35 attorney and counselor-at-law, attorney-at-law, counselor-at-law,
36 attorney, counselor, attorney and counselor, or an equivalent term, in
37 such manner as to convey the impression that he or she is a legal
38 practitioner of law, or (7) advertise that he or she, either alone or with
39 others, owns, conducts or maintains a law office, or office or place of
40 business of any kind for the practice of law.

41 (b) (1) Any person who violates any provision of this section shall
42 be guilty of a class A misdemeanor, except that in any prosecution
43 under this section, if the defendant proves by a preponderance of the
44 evidence that the defendant committed the proscribed act or acts while
45 admitted to practice law before the highest court of original
46 jurisdiction in any state, the District of Columbia, the Commonwealth
47 of Puerto Rico or a territory of the United States or in a district court of
48 the United States and while a member in good standing of such bar,

49 such defendant shall be fined not more than two hundred [and] fifty
50 dollars or imprisoned not more than two months, or both, for any
51 violation of this section.

52 (2) The provisions of subdivision (1) of this subsection shall not
53 apply to any employee in this state of a stock or nonstock corporation,
54 partnership, limited liability company or other business entity who,
55 within the scope of his or her employment, renders legal advice to his
56 or her employer or its corporate affiliate and who is admitted to
57 practice law before the highest court of original jurisdiction in any
58 state, the District of Columbia, the Commonwealth of Puerto Rico or a
59 territory of the United States or in a district court of the United States
60 and is a member in good standing of such bar. For the purposes of this
61 [subsection] subdivision, "employee" means any person engaged in
62 service to an employer in the business of his or her employer, but does
63 not include an independent contractor.

64 (3) In any prosecution under section 53a-8 for soliciting, requesting,
65 commanding, importuning or intentionally aiding in the violation of
66 this section, and in any prosecution under section 53a-48 for
67 conspiracy to violate this section, the state shall have the burden of
68 proving beyond a reasonable doubt that the defendant had actual
69 knowledge that the person was not admitted to practice law in any
70 jurisdiction at the time such violation occurred.

71 (c) Any person who violates any provision of this section shall be
72 deemed in contempt of court, and the Superior Court shall have
73 jurisdiction in equity upon the petition of any member of the bar of
74 this state in good standing or upon its own motion to restrain such
75 violation.

76 (d) The provisions of this section shall not be construed as
77 prohibiting: (1) A town clerk from preparing or drawing deeds,
78 mortgages, releases, certificates of change of name and trade name
79 certificates which are to be recorded or filed in the town clerk's office
80 in the town in which the town clerk holds office; (2) any person from

81 practicing law or pleading at the bar of any court of this state in his or
82 her own cause; (3) any person from acting as an agent or
83 representative for a party in an international arbitration, as defined in
84 subsection (3) of section 50a-101; or (4) any attorney admitted to
85 practice law in any other state or the District of Columbia from
86 practicing law in relation to an impeachment proceeding pursuant to
87 Article Ninth of the Connecticut Constitution, including an
88 impeachment inquiry or investigation, if the attorney is retained by (A)
89 the General Assembly, the House of Representatives, the Senate, a
90 committee of the House of Representatives or the Senate, or the
91 presiding officer at a Senate trial, or (B) an officer subject to
92 impeachment pursuant to said Article Ninth.

93 Sec. 3. Section 116 of substitute house bill 5145 of the current session
94 is repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	New section
Sec. 2	<i>October 1, 2012</i>	51-88
Sec. 3	<i>from passage</i>	Repealer section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Judicial Dept.	GF - Potential Revenue Gain	Indeterminate	Indeterminate

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a potential revenue gain of less than \$2,500 by prohibiting notary publics from offering or providing legal advice in immigration matters. It is anticipated that relatively few fines would be imposed on an annual basis.

House "A" made changes that resulted in a potential minimal revenue gain to the Judicial Department.

House "B" made clarifications that do not result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5147 (as amended by House "A" and "B")******AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW BY NOTARIES PUBLIC.*****SUMMARY:**

This bill generally increases the penalty for the unauthorized practice of law and makes additional conduct subject to such penalties. As part of these changes, the bill repeals § 116 of HB 5145, which changes the penalty for the unauthorized practice of law.

The bill creates an explicit exception to the ban on the unauthorized practice of law for people who are authorized to provide legal services pursuant to a statute or court rule. (For example, court rules allow attorneys practicing “pro hac vice,” authorized house counsel, and foreign legal consultants to provide legal services here under certain conditions without admission to the state bar.) The bill also includes within the prohibition on unauthorized practice someone who has been admitted to the Connecticut bar but is disqualified from practicing law for specified reasons (e.g., disbarment or certain suspensions).

The bill prohibits a notary public from offering or providing legal advice in immigration matters, or representing someone in immigration proceedings, unless the notary public is (1) an attorney admitted to the Connecticut bar or (2) authorized by federal regulations to practice immigration law or represent people in immigration proceedings (see BACKGROUND).

The bill also prohibits a notary public from assuming, using, or advertising the title of notario or notario publico (see BACKGROUND)

unless he or she (1) is an attorney admitted to the Connecticut bar or (2) indicates in an advertisement or otherwise provides written notice that he or she is not a state-licensed attorney.

Under the bill, any notary public who violates these provisions is deemed to have violated the prohibition on the unauthorized practice of law, and is subject to the fine or imprisonment that applies to unauthorized practice.

The bill also makes technical changes.

*House Amendment "A" adds the provisions concerning the penalties for, and conduct constituting, the unauthorized practice of law, other than those specifically relating to notaries and notarios.

*House Amendment "B" adds the provision allowing a notary to use the title of notario or notario publico if the notary indicates in an advertisement or written notice that he or she is not a state-licensed attorney.

EFFECTIVE DATE: October 1, 2012, except the repeal of § 116 of HB 5145 is effective upon passage.

UNAUTHORIZED PRACTICE OF LAW

Penalties and Exceptions

Under current law, someone who illegally practices law is subject to up to two months' imprisonment, a fine of up to \$250, or both. The bill repeals a provision of HB 5145 (§ 116) that would classify the offense as a class C misdemeanor, punishable by up to two months' imprisonment, up to a \$500 fine, or both.

The bill generally increases the penalty for the unauthorized practice of law to a class A misdemeanor, punishable by up to one year in prison, up to a \$2,000 fine, or both. But the bill keeps the current penalty if the defendant proves, by a preponderance of the evidence, that he or she committed the unlawful acts while an admitted member of good standing of the bar of (1) another state, (2) the District of

Columbia, (3) Puerto Rico, (4) a U.S. territory, or (5) a U.S. district court.

Under existing law, unchanged by the bill, the penalties for the unauthorized practice of law do not apply to someone who (1) is an admitted member in good standing of the bar of any of the above specified jurisdictions and (2) within the scope of his or her employment, gives legal advice to his or her employer or its corporate affiliate.

The bill also provides that in any prosecution for soliciting, requesting, commanding, importuning, or intentionally aiding in the unauthorized practice of law, or in any prosecution for conspiracy to commit the unauthorized practice of law, the state has the burden of proving, beyond a reasonable doubt, that the defendant had actual knowledge that the person was not admitted to practice law in any jurisdiction at the time the violation occurred.

Prohibited Activities

Current law generally prohibits anyone who has not been admitted to the Connecticut bar from undertaking various activities. The bill extends this prohibition, with the exceptions noted above, to someone who has been admitted but is disqualified from practicing law because he or she has resigned, is disbarred, placed on inactive status or suspended for any reason other than failing to pay the occupational tax on attorneys or client security fund fee required by law. Prohibited activities include:

1. practicing law or appearing as an attorney for anyone else in any court in the state;
2. making it a business to practice law or appear as an attorney for anyone else in any such court;
3. making it a business to solicit employment as an attorney;
4. holding oneself out to the public as being entitled to practice

law;

5. assuming the role of an attorney;
6. assuming, using, or advertising the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in a manner suggesting that he or she is a legal practitioner of law; and
7. advertising that he or she, either alone or with others, owns, conducts, or maintains a place of business of any kind for the practice of law.

BACKGROUND

Related Federal Regulations

Federal regulations allow non-profit religious, charitable, social service, or similar organizations established in the United States and recognized as such by the Board of Immigration Appeals to designate one or more representatives to represent people in immigration matters. The organization must establish to the board's satisfaction that it (1) makes only nominal charges and does not assess excessive membership dues for people it assists and (2) has at its disposal adequate knowledge, information, and experience. Regulations specify how organizations may apply for such recognition; how the board may withdraw recognition; how recognized organizations may apply for accreditation of persons of good moral character as their representatives; and related matters (8 C.F.R. § 292.2).

Notario Publico

In many Spanish-speaking countries, a "notario publico" is authorized to perform certain services that in the United States are reserved to lawyers (Office of the Connecticut Secretary of the State, Notary Public Manual, pg. 14).

Related Bill

sHB 5145 as amended by House Amendment "A," passed by the House on April 30, 2012, makes the unauthorized practice of law a class C misdemeanor, punishable by up to two months' imprisonment, up to a \$500 fine, or both.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (04/02/2012)